

The Water to his own Mill upon the said River: So be, both the Ends of the Dam were made to rest upon his own Ground, and the Dike be so built as not to divert the Water that comes over it or goes from his Mill, to return to the former Channel, and go to another Heretofore Mill below; Albeit the Water had always before the Memory of Man run free without Interruption to that inferior Mill.

22. Novemb. 1713. Cunnighamme contra Kennedy. Those having Right to a Salmon Fishing in a River, represented by a Petition, to the Court of Sessions, that an Heretofore by draining a Lock upon his Ground and letting it in that River had given a red Structure to the River which hindered the Salmon to swim there to the great Detrement of the Country; and that if he were forced to stop he might be obliged to stop his letting out part of that new Thing. It was answered, that any Prejudice the Suppliant might sustain could not hinder a Person to dispose at Pleasure of his own Property, in cutting his own Ground to drain his Lock. It was replied, that one may indeed use his own Property so be he keep within his own Boundaries and not forth any noisome Thing upon his Neighbour's. He may build up his own Ground, albeit his Neighbour's Light or Prospect be eclipsed thereby; or may dig a Well in his own Ground tho the Veins of his Neighbour's Well are thereby cut off; But if he have a Lock on a Hill he may not let it to drain his Neighbour's Ground below; nor can one build a Mill upon his own Ground, to carry the Water from his Neighbour's Mill; nor he turn the Water out of the said Channel, to make it run otherwise upon his Neighbour's than formerly; nor can the Heretofore of an inferior Tenement within Burgh, put Fire upon the Floor of it, to make the Superior Tenement. It was replied I suppose the Proprietor of the Lock could not wrong his Neighbour's by using it contrary to the Nature of it; Nothing could hinder him to drain his Lock that Way, seeing it had before a perpetual Current to the River, and after the Draining, which would soon over, the Current of the River would be as little and as pure as ever. So that any temporary Damage to the Fishing, could not bar him from helping the natural Course of the Lock and ridding the Passage, to make it run quickly out. 2. Albeit one could make no new Work upon his own Ground, to the Prejudice of his Neighbour's Property; yet he might well send away a standing Water, Corruption or Filth by a publick River, who of one prime Use is to purge the Earth of all Corruption and carry it to the Seas albeit detremental to Fishing, which is a Casually liable to such Inconvenience. The Lords inclined to refuse the Bill upon this main Condition, that it was the proper Use of Rivers to carry away the Corruption and Filth of the Earth, which should not be hindered by any Right of Fishing of the River (June 1661. Mayor of Berwick and others contra Glasgow &c)

He who in making a new Work upon his own Estate uses his Right without trespassing against any Law Custom Title or Possession, which may subject him to any Service towards his Neighbours, is not answerable for the Damage which they may chance to sustain thereby; unless it be, that he made that Change merely with a View to hurt others, without any Advantage to himself. For in this Case, it would be a pure Act of Malice, which Equity would not allow of l. 30. ff. de rer. vind. But if the Work were useful to him, as if he raise in his Estate any lawful Repair to secure it against the Inflowings of a Torrent or River; and that his Neighbour's Grounds were thereby the more exposed to the Flood, or suffers from thence any other Inconvenience, he could not be made answerable for it. Thus he who digging for Water in his own Ground should thereby drain a Well or Spring in his Neighbour's Ground, would be liable to no Action of Damages in that Sort. l. 1. §. 12. l. 2. §. 9. l. 21. ff. de acqu. et agn. plus. circa l. 24. §. 12. ff. de imm. vel lect. For in these and the like Events are Casualties and natural Effects of the Operation into which he who makes the Change has had Right to put his Things. And it is not his Act which causes the Damage.

But those who make any new Work that is to make any Change in the Condition of the Place l. 1. §. 11. ff. de op. nov. num. Whether it be in Estates by Law in the City or Country, whether in Places belonging to particular Persons or in those of publick Use l. 1. §. 14. ff. de ac. ought to serve their own Conventions may in said Manner as not to trespass in the least on the Right of other Persons concerned in the Change which they pretend to make l. 1. §. 11. ff. de acqu. et agn. plus. circa. For altho' one may make upon his own Estate whatever Changes he stands in Need of, and often even although they may be hurtful to other Persons as hath been already explained: Yet one cannot make those Alterations which another Person may have a Right to hinder. Thus altho' one may raise his House higher and thereby prejudice his Neighbour by taking away his Prospect; yet he who is subject to the Service of not raising his Building higher, has not any more that Liberty while the Service can have its Use. And he who with Regard to a Spring of Water in his Estate, or a Rivulet running thro his Ground, might let it discharge itself according to the natural Course which the Water should take, may have lost this Liberty by the Right which a Neighbour may have acquired to have this Water conveyed to his Lands by a Canal or Conduit, which is to discharge itself in a certain Place. And if in these Cases the Proprietor of a Piece of Ground makes any new Work therein which is hurtful either to his Neighbour, or even to others whose Estates are at some Distance from his, but who have a Right to hinder him from making the said new Work; he will be obliged to restore Things to their first Estate, and to repair the Damage which he may have caused by his Innovation, l. 20. pr. l. 21. §. 4. l. 8. ff. de op. nov. num. ff. de the Work which a Prop